## IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

NOTICE OF REMOVAL
No. FILED STAMP: NOVEMBER 21, 2008
08CV6692
JUDGE CONLON
MAG. JUDGE SCHENKIER
J. N.

NOW COMES the Defendant K.B.'Z EATERY, INC., through counsel, and pursuant to 28 U.S.C. §1441(b), hereby petitions for the removal of the above-captioned case filed in the Circuit Court of Cook County, Illinois Chancery Division as Case No. 08 CH 37440, from the Circuit Court of Cook County to this Court and in support thereof states:

- 1. On or about October 7, 2008, Plaintiff, represented by counsel, filed a Complaint against Defendant in the Chancery Division of the Circuit Court of Cook County, under the caption ABC Business Forms, Inc. v. K.B.'Z Eatery, Inc. d/b/a Camille's Sidewalk Café and John Does 1-10, No. 08 CH 37440. A copy of the Complaint is attached hereto as Exhibit "A."
- Defendant was served with summons and complaint in the Cook County action on
   October 22, 2008 by special process server.
- 3. In the Cook County Complaint, Plaintiff ABC Business Forms, Inc. alleges that Defendant K.B.'Z Eatery, Inc. sent to it "unsolicited advertisements to telephone facsimile machines" in violation of the Telephone Consumer Protection Act, 47 U.S.C. §227 ("TCPA") and the Illinois Consumer Fraud Act, 815 ILCS 505/2 ("ICFA"). ABC Business Forms, Inc. also alleges that the sending of the facsimile constituted "conversion" under Illinois common law.

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4. Because Plaintiff's claim under the TCPA arises under federal law, this action

could have been brought in the United States District Court pursuant to 28 U.S.C. §1331. Brill v.

Countrywide Home Loans, Inc., 427 F.3d 446, 451 (7th Cir. 2005) ("[R]emoval of a putative

TCPA class action] is authorized not only by the Class Action Fairness Act but also by §1441,

because the claim arises under federal law."); G.M. Sign, Inc. v. Franklin Bank, S.S.B., No. 06 C

0949, 2006 U.S. Dist. LEXIS 29667, \*7 (N.D. Ill. Apr. 19, 2006) (holding that remand of a

TCPA action would be improper because subject matter jurisdiction for such claims exists under

28 U.S.C. §1331.)

5. This Court has supplemental jurisdiction over Plaintiff's ICFA and common law

conversion claims under 28 U.S.C. §1367(a) because the claims arise out of the same case or

controversy.

6. This Notice of Removal is being timely under 28 U.S.C. §1446(b), as it is filed

within thirty (30) days from the date Defendant was received the summons and complaint in the

Cook County action.

7. Exhibit "A" contains a copy of the only pleading currently on file with the Circuit

Court of Cook County.

8. A copy of this Notice of Removal has been filed with the Circuit Court of Cook

County, Chancery Division.

DATED this 21<sup>st</sup> day of November, 2008.

Respectfully submitted,

By: s/ Jeffrey A. Siderius

One of the Attorneys for Defendant,

K.B'Z Eatery, Inc.

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